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Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

SIERRA CLUB,	)	No. 08-4248 SC
	)	
Plaintiff,	)	<b>ANSWER OF FEDERAL</b>
	)	<b>DEFENDANTS TO PLAINTIFF</b>
v.	)	<b>SIERRA CLUB'S FIRST AMENDED</b>
	)	<b>COMPLAINT</b>
UNITED STATES DEPARTMENT OF	)	
AGRICULTURE ET AL.,	)	
	)	
Defendants.	)	

Defendants United States Department of Agriculture ("USDA") and Rural Utilities Service ("RUS") (collectively referred to as "Federal Defendants"), by and through their counsel, hereby admit, deny, allege and otherwise respond to Plaintiff Sierra Club's First Amended Complaint ("Complaint") as follows:

1. Answering Paragraph 1, the Federal Defendants assert that this paragraph is a characterization of this civil action and a legal conclusion, and not an allegation of fact, and so no answer is required, but it is denied that the Sierra Club made the requests for records at issue in this civil action.

2. Answering Paragraph 2, the Federal Defendants assert that this paragraph is a jurisdictional statement and a venue statement, and not an allegation of fact, and so no answer is required, but

1 it is denied that venue is proper in this district.

2 3. Answering Paragraph 3, the Federal Defendants assert that this paragraph is an intradistrict  
3 assignment statement, and not an allegation of fact, and so no answer is required, but it is denied  
4 that venue is proper in this district.

5 4. Answering Paragraph 4, the Federal Defendants assert that this paragraph is a characterization  
6 of the plaintiff Sierra Club, and not an allegation of fact, and so no answer is required.

7 5. Answering Paragraph 5, the Federal Defendants assert that this paragraph is a characterization  
8 of the Lone Star Chapter of the plaintiff Sierra Club, and not an allegation of fact, and so no  
9 answer is required.

10 6. Answering Paragraph 6, the Federal Defendants assert that this paragraph is a characterization  
11 of the Cumberland Chapter of the plaintiff Sierra Club, and not an allegation of fact, and so no  
12 answer is required.

13 7. Answering the first three sentences of Paragraph 7, the Federal Defendants assert that these  
14 sentences are characterizations of the actions of the plaintiff, and not allegations of fact, and so  
15 no answer is required. Answering the fourth sentence of Paragraph 6, the Federal Defendants  
16 have insufficient information to admit or deny the allegations of this sentence, and therefore deny  
17 each and every allegation in this sentence.

18 8. Answering Paragraph 8, the Federal Defendants admit that the USDA is an agency of the  
19 United States and has custody and control of the records Plaintiff seeks to the extent that those  
20 records actually exist and actually are in the custody of USDA.

21 9 [First]. Answering the First Paragraph listed as Paragraph 9 and appearing on page 3 of  
22 Plaintiff's Complaint, the Federal Defendants admit that the RUS is a component of the USDA,  
23 deny that it is any agency of the United States, and admit that the RUS has custody and control of  
24 the records Plaintiff seeks to the extent that those records actually exist and actually are in the  
25 custody of the RUS.

26 9 [Second]. Answering the Second Paragraph listed as Paragraph 9 and appearing on page 4 of  
27 Plaintiff's Complaint, the Federal Defendants assert that this paragraph states legal conclusions,  
28 and not allegations of fact, and so no answer is required.

1 10. Answering Paragraph 10, the Federal Defendants assert that this paragraph states legal  
2 conclusions, and not allegations of fact, and so no answer is required.

3 11. Answering Paragraph 11, the Federal Defendants assert that this paragraph states legal  
4 conclusions, and not allegations of fact, and so no answer is required.

5 12. Answering Paragraph 12, the Federal Defendants assert that this paragraph states legal  
6 conclusions, and not allegations of fact, and so no answer is required.

7 13. Answering Paragraph 13, the Federal Defendants admit that the Plaintiff made a Freedom of  
8 Information Act request dated October 26, 2007, to the RUS; assert that this request is the best  
9 evidence of its own contents; and otherwise assert that this paragraph is a characterization of the  
10 request, and not an allegation of fact, and so no answer is required.

11 14. Answering Paragraph 14, the Federal Defendants admit that no response was made by RUS  
12 to the FOIA request until the partial initial reply of June 4, 2008; assert that the partial initial  
13 reply is the best evidence of its own contents, and otherwise assert that this paragraph is a  
14 characterization of the partial initial reply, and not an allegation of fact, and so no answer is  
15 required.

16 15. Answering Paragraph 15, the Federal Defendants assert that the partial initial reply  
17 referenced in Paragraph 14 above is the best evidence of its own contents, and otherwise assert  
18 that this paragraph is a characterization of the partial initial reply, and not an allegation of fact,  
19 and so no answer is required.

20 16. Answering Paragraph 16, the Federal Defendants admit that Plaintiff sent an email letter  
21 dated September 11, 2008, to RUS addressing the FOIA request and partial initial reply  
22 referenced in Paragraphs 13-15 above. Federal Defendants otherwise assert that this paragraph is  
23 a characterization of that email letter; that the email letter is the best evidence of its own  
24 contents, and not an allegation of fact; and that no further answer to Paragraph 16 is required.

25 17. Answering Paragraph 17, the Federal Defendants assert that this paragraph is a  
26 characterization of the records provided to Plaintiff in the partial initial reply referenced in  
27 Paragraph 14 above, and not an allegation of fact; that these records are the best evidence of their  
28 own contents; and that no further answer to Paragraph 17 is required.

1 18. Answering Paragraph 18, the Federal Defendants assert that this paragraph is a  
2 characterization of the partial initial reply referenced in Paragraph 14, and not an allegation of  
3 fact; that the partial initial reply is the best evidence of its own contents; and that no further  
4 answer to Paragraph 18 is required.

5 19. Answering Paragraph 19, the Federal Defendants deny that Plaintiff made a request for  
6 records under the Freedom of Information Act (FOIA) dated November 20, 2007, to the RUS,  
7 assert that the request is the best evidence of its own contents, and otherwise assert that this  
8 paragraph is a characterization of the request, and not an allegation of fact, and so no further  
9 answer is required.

10 20. Answering the first sentence of Paragraph 20, the Federal Defendants assert that this  
11 sentence states a legal conclusion, and not an allegation of fact, and so no answer is required,  
12 except that the Federal Defendants admit that the RUS had made no answer to the above-  
13 referenced FOIA request dated November 20, 2007, as of March 5, 2008. Answering the  
14 remainder of Paragraph 20, the Federal Defendants admit the remainder of the paragraph, except  
15 that Federal Defendants have insufficient information to admit or deny the allegation that on  
16 March 5, 2008, Adrienne Stinnet, who is no longer employed by USDA, told counsel for Plaintiff  
17 that a reply would be made to a targeted FOIA request for narrower categories of documents  
18 probably within a week, and therefore deny that allegation.

19 21. Answering Paragraph 21, the Federal Defendants deny that Plaintiff made a request for  
20 records under FOIA dated March 6, 2008, to the RUS, and assert that the request is the best  
21 evidence of its own contents, but otherwise assert that this paragraph is a characterization of the  
22 request, and not an allegation of fact, and so no further answer is required.

23 22. Answering the first sentence of Paragraph 22, the Federal Defendants admit the allegations  
24 of this sentence. Answering the second sentence of Paragraph 22, the Federal Defendants admit  
25 that the initial reply to the targeted request contained several documents, some of which  
26 contained redactions pursuant to FOIA Exemption 4 (5 U.S.C. §552(b)(4)), but deny that the  
27 seven documents referenced were all of the documents that were provided. Answering the  
28 remainder of Paragraph 22, the Federal Defendants assert that the remainder of the paragraph is a

1 characterization of the initial reply, which is the best evidence of its own contents.

2 23. Answering Paragraph 23, the Federal Defendants assert that this paragraph contains legal  
3 arguments and a legal conclusion, and not allegations of fact, and so no answer is required.

4 24. Answering Paragraph 24, the Federal Defendants assert that this paragraph contains legal  
5 arguments and a legal conclusion, and not allegations of fact, and so no answer is required.

6 25. Answering Paragraph 25, the Federal Defendants assert that this paragraph contains legal  
7 arguments and a legal conclusion, and not allegations of fact, and so no answer is required.

8 26. Answering Paragraph 26, the Federal Defendants assert that this paragraph contains legal  
9 arguments and a legal conclusion, and not allegations of fact, and so no answer is required.

10 27. Answering Paragraph 27, the Federal Defendants assert that this paragraph is a  
11 characterization of the above-referenced initial reply and of its enclosures, which are the best  
12 evidence of their own contents.

13 28. Answering Paragraph 28, the Federal Defendants deny the allegations of this paragraph.

14 29. Answering Paragraph 29, the Federal Defendants assert that this paragraph is a legal  
15 conclusion, and not an allegation of fact, and so no answer is required.

16 30. Answering Paragraph 30, the Federal Defendants assert that this paragraph is a legal  
17 conclusion, and not an allegation of fact, and so no answer is required.

18 The remaining allegations of the Complaint constitute Plaintiff's prayer for relief to which no  
19 response is required. However, the Federal Defendants deny that Plaintiff is entitled to the relief  
20 requested or any relief whatsoever. The Federal Defendants further deny each and every  
21 allegation of the Complaint that has not been admitted, denied, or otherwise qualified above. In  
22 particular, were an answer to be deemed required as to any of Plaintiff's allegations to which the  
23 Federal Defendants assert that no answer is required, the Federal Defendants deny each and every  
24 allegation.

25 In further answer to the Complaint and as separate affirmative defenses, the Federal  
26 Defendants allege as follows:

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**FIRST AFFIRMATIVE DEFENSE**

(Lack of Standing/Improper Plaintiff/Failure to Exhaust Administrative Remedies)

Plaintiff Sierra Club did not submit the November 20, 2007 FOIA request at issue in this matter. Rather, the Lone Star Chapter of the Sierra Club did so. As a result, with respect to the November 20, 2007 FOIA request at issue in this matter the Sierra Club lacks standing to bring this civil action, is not a proper FOIA plaintiff, and has failed to exhaust its administrative remedies by having failed to submit a FOIA request in its own name.

**SECOND AFFIRMATIVE DEFENSE**

(Further Affirmative Defenses)

The Federal Defendants reserve the right to assert additional affirmative defenses in the event that such additional affirmative defenses would be appropriate.

Dated: January 8, 2009

Respectfully submitted,

JOSEPH P. RUSSONIELLO  
United States Attorney

By:                     /s/                      
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